

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

Technology Transitions Policy)
Task Force)
_____)

GN Docket No. 13-5

**REPLY COMMENTS OF
WORLDNET TELECOMMUNICATIONS, INC.**

WorldNet Telecommunications, Inc. (“WorldNet”) hereby submits its reply comments with respect to the proposal by the Commission’s Technology Transitions Task Force to authorize “real world trials” relating to the “ongoing transitions from copper to fiber” and from “time-division multiplexing (TDM) to IP. As discussed more fully below, WorldNet disagrees with the presumption underlying the proposed trials – namely that the substantive and procedural rules adopted by the Commission to implement the Telecommunications Act of 1996 are impeding incumbent telephone companies from investing in innovative services. Thus, we oppose an “anything goes” deregulatory approach that would unquestionably undermine competition in many markets, particularly a market such as Puerto Rico. Nevertheless, to the extent that this proceeding moves forward, WorldNet submits that it is essential for the Commission to put into place mechanisms for assessing and mitigating the impact on competition of any changes in its rules, whether those changes are applied on a trial basis or otherwise. The Commission’s overriding objective must be to ensure that the compliance with the still applicable federal and local laws requiring telecommunications competition.

INTRODUCTION AND SUMMARY

WorldNet is a locally-owned competitive local exchange company serving predominantly small- and medium-sized business customers in Puerto Rico.¹ WorldNet has adhered to the "script" envisioned by Congress in the 1996 Act by starting with the resale of ILEC services and then transitioning to facilities-based service through the use of its own IP network in conjunction with unbundled ILEC transport and unbundled ILEC hybrid and copper loops. WorldNet's presence in the market has conferred substantial benefits on consumers and has offered stakeholders a potential return on investment and some 160 employees (and their families) in Puerto Rico the opportunity for a steady income and a promising career in a cutting edge field.

While WorldNet has made significant investments, and taken significant risks, in deploying its own facilities, including a state of the art IP/broadband softswitch, a major portion of WorldNet's last-mile connections to customers consists of copper loops, as was and is expressly anticipated and provided for under the Act. The result of this strategy has been the promotion of the three core pro-competitive goals of the 1996 Act:

- reduced pricing (WorldNet is one of the only three principal competitors at the table for business voice, data and Internet communications projects with much larger players like American-Movil-controlled Puerto Rico Telephone Company, and, AT&T. In fact, WorldNet is the only major CLEC in Puerto Rico. Often the only two competitors bidding on Island-wide opportunities are WorldNet and PRTC);
- technological innovation (WorldNet not only deploys advanced broadband services but has launched a next generation cloud computing over broadband bundled technology offering); and
- improved quality of service (WorldNet has a well-documented record of successfully pushing incumbent providers and the local regulatory board to "raise the bar" for quality of performance through the adoption of meaningful standards for the delivery and maintenance of basic and advanced telecommunications services. Indeed, WorldNet has been primary in moving installation times from 60 days to 8 and repair from 10 to 1).

¹ Some 4,900 customers, including around 30 municipalities and government agencies, rely on WorldNet as their telecommunications and broadband services provider.

None of these goals would have been attained in Puerto Rico without WorldNet, and WorldNet would not have survived but for the pro-competitive mandates and safeguards of the Act.

As noted, WorldNet has installed an IP switch (an action that was fraught with risk at the time it was taken) that it uses in conjunction with its MPLS-based network to provide broadband and broadband-enabled services throughout Puerto Rico. Moreover, for many of its customers, WorldNet is utilizing existing copper infrastructure leased from the ILEC as unbundled network elements to deliver not only a variety of basic services, but also (among other things) bonded Ethernet service at speeds up to 45 Mbps. As such, in the face of the substantial impediments that face competitive entrants in a monopoly market,² and using the tools provided under the 1996 Act as well as its own entrepreneurial spirit and determination, WorldNet in many respects already has made the much-discussed “IP-transition” and is providing consumers in Puerto Rico with quality, advanced services. In Puerto Rico, at least, copper remains the primary mode of last-mile access.

Given its history, it will come as no surprise that WorldNet agrees with and echoes those commenters in this proceeding who take the position that the top technology transition priorities for the Commission should not be trials designed to give ILECs free reign to ignore the competition-enhancing rules that the Commission adopted to implement the 1996 Telecommunications Act. Rather, the FCC’s top priority in the TDM-to-IP transition should be the adoption and/or updating of rules that require just, reasonable, and nondiscriminatory IP interconnection from incumbent LECs and that constrain incumbent LEC exercises of continuing

² WorldNet faces substantial competitive challenges and additional costs as a result of constant disputes, and the need for dispute resolution, in its relationship with PRTC, the ILEC. Of course, the marginal burden on the enormously much larger American Movil controlled PRTC is much less than on the smaller CLEC, WorldNet. Nevertheless, WorldNet has remained a vibrant competitive alternative in the Puerto Rico market.

market power over last-mile connections to businesses, especially copper facilities. In fact, currently the ILEC in Puerto Rico does not allow IP interconnection and as recently as 2010 informed the local Telecommunications Regulatory Board that they do not have the capability for IP interconnection. The Commission should not, and legally cannot, adopt policies that effectively repeal the pro-competition regulatory regime that Congress mandated in the 1996 Act.

To the extent that Commission nonetheless decides to allow the proposed trials to go forward, WorldNet submits that such trials and, perhaps more importantly, the actions taken by virtue of such trials, should be the subject of structural and procedural rules designed to protect competition and consumers. The proponents of the proposed trials suggest that if a wholesale customer is to be affected by the actions of an ILEC, all that the ILEC needs to do is simply “tell them.”³ And the proposed standard for determining whether copper could be retired would be the “business judgment” of the ILEC.⁴ This approach would effectively put into the hands of the ILECs the unilateral power to condition or eliminate competition. These issues are too big, and too important, to be disposed of with an order that could potentially unwind seventeen years of precedent mandated by the United States Congress. Instead of giving its imprimatur to such an approach, the Commission should move 180 degrees in the opposite direction by limiting and conditioning any potentially market-changing actions.

Among other things, the FCC should establish a “process” pursuant to which, for any particular jurisdiction in which an ILEC seeks to retire copper (whether pursuant to a “trial” or otherwise), a threshold proceeding must take place, in concert with local regulators and taking

³ AT&T Comments at 13 (“The trial plans should explain how wholesale purchasers and their customers will be affected by the transition.”)

⁴ AT&T Comments at 8.

into account local conditions, to determine (among many other things): (a) whether the particular situation involves just a few retail customers, a complex wholesale competitive carrier arrangement, or otherwise and (b) whether the ILEC can demonstrate that any plans to retire copper or otherwise proceed with such transition will not adversely impact the pro-competitive requirements of the Act. If an ILEC fails to make the requisite showing, it would be up to the regulatory authority to decide whether the request should be denied or whether appropriate safeguards or conditions can be put in place to prevent or mitigate such impact.

DISCUSSION

A. An “Anything Goes” Trial Relating to Copper Retirement and/or TDM-to - IP Transition Would Be Contrary to the Letter and Spirit of the 1996 Telecommunications Act.

WorldNet submits that the Commission should not pursue a path, through trials or otherwise, that will result in an “end run” around the expressed will of Congress. The policy judgments on which Congress based the 1996 Act and on which the Commission relied in implementing the Act, reflect the carefully balanced consideration given to the arguments for retaining a dominant/monopoly provider environment and the arguments for promoting competition as the catalyst for best serving the public’s fundamental interest in reduced pricing, improved service, and technological innovation. In deciding to rely on unbundling and competition, Congress and the Commission recognized that opening access to incumbent networks with cost-based pricing was the only way to attain the benefits of competition. A return to the monopoly model is, in WorldNet’s view, not a thoughtful nor merited reaction to the so-called “IP transition.”

Thus, WorldNet strongly disagrees with the “paradigm” put forth by the proponents of deregulation that the TDM-IP transition requires a dramatic dispensation of regulatory

safeguards and/or a free license to retire copper. Whether or not there are instances where, as argued by AT&T, compliance with the 1996 Act and the Commission's implementing rules "chills" ILEC investment, the Commission does not have the authority to second-guess Congress' decision to affirmatively choose unbundling and competition over generalized promises of increased ILEC investment. Under the current regulatory regime, retiring copper means killing competition, since the Commission's prior orders have effectively made copper the only meaningful and ubiquitous manner by which competitors can compete. The Commission therefore should categorically reject as contrary to the 1996 Act's principles the proffered approach toward copper retirement whereby decisions would be based on an ILEC's "business judgment" and the protection afforded to CLECs would be that they must be "informed."

It is noteworthy that many parties commenting in this proceeding have argued that the Commission should not compromise more than a decade of competitive development under the 1996 Act by allowing ILECs to effectively eliminate last-mile unbundling obligations in exchange for the generalized promise of increased ILEC last-mile fiber investment. WorldNet agrees with these commenters -- the TDM-to-IP transition should not and, indeed, cannot be used as an excuse to effectively eviscerate Section 251(c)(3) of the 1996 Act.

More than a decade after its enactment, the most important element of Section 251(c)(3) undeniably is the access that it gives competitors to ILEC last-mile facilities. In many important market sectors (including small- and medium-sized businesses), the number of last-mile alternatives to ILEC facilities for competitors are as limited today as they were in 1996. This is especially true in Puerto Rico. As a result, giving ILECs the ability to immunize themselves from last-mile unbundling obligations through the retirement of copper loops (or even just the

threat of retirement of those facilities) would render Section 251(c)(3) of the 1996 Act virtually meaningless and effectively eliminate UNE-based competition as an option under the 1996 Act.

Nor can the proposed changes in the rules be justified as an appropriate use of the Commission's authority to exercise "forbearance" with respect to an outdated or unnecessary regulation. By its plain terms, the Commission's forbearance authority requires, among other things, that the "competitive effect be weighed," that the action taken be consistent with "protection of consumers," and, perhaps most centrally, that such consideration be "consistent with the public interest." CITE. Simply put, WorldNet does not believe that the record supports such a finding anywhere, and least of all in a place like Puerto Rico. Indeed, the proposed wholesale abandonment of the current pro-competition regulatory regime would completely capsize the 1996 Act along with the years of thought and discussion that led up to it, and the demonstrated market and consumer benefits that have resulted from it in markets like Puerto Rico. To repeat: there is simply no way on this record that a meaningful or thoughtful showing that the forbearance requirements noted above can be met in Puerto Rico.

That is why the only prudent approach for the Commission to take is for it to ensure a thoughtful, fact based inquiry based on the specific conditions of any particular market, and to require as a pre-condition of any ILEC action that it meet the burden to show that its actions are consistent with these bedrock legal requirements. Only then could the Commission really be satisfied that "the competitive effect has been weighed," "consumers are protected," and any bottom line action "consistent with the public interest."

B. The Commission Should Focus on the Steps Needed to Safeguard Competition.

Apart from the legal issues discussed above, WorldNet submits that giving ILECs "trial" relief will not effectuate a better TDM-to-IP transition. What the Commission needs to be

thinking about are the appropriate steps needed to safeguard competition and the critical benefits of competition. The Commission should not give ILECs a “blank check” to do whatever they want in the name of the TDM-IP transition. Rather, at a minimum, the Commission should establish procedures to be employed before, during, and after ILECs are afforded relief from the current rules that will ensure a complete assessment of the competitive impact and local conditions in any particular market.

More specifically, the Commission should set forth rules dictating that in any jurisdiction where an ILEC seeks to retire copper or otherwise diminish or delete the availability of any of the competitive inputs required under the Act, it would first have to initiate a proceeding with clear notice to all affected stakeholders, particularly any competitive carriers with whom such ILEC has interconnection or similar arrangements and state and local regulatory authorities. In such proceeding, the ILEC would have the burden of, at a minimum (a) developing a factual record as to what it proposes and who, or what, would be impacted and (b) showing that its proposed actions would not diminish, and would be consistent with, the principles of the Act and other applicable law. All affected stakeholders, including competitive carriers and state and local regulators, would be afforded a full and fair opportunity to consider such assertions and respond.

Upon completion of the proceeding described above, the regulatory authority would have the option of denying, approving, or approving with conditions, the proposed actions. In setting conditions, the Commission would have the flexibility to fashion an appropriate approach consistent with local conditions. And in the case of a proposal to retire copper facilities, the Commission could impose as a condition the requirement to offer those facilities for sale to competitors on such terms as the Commission deems appropriate, whether “salvage value” or

otherwise.⁵ Indeed, at this early stage, WorldNet sees no valid basis why salvage value should not be the ceiling on any potential cost recovery.

Another specific action that the Commission should consider as part of any TDM-IP transition is to require the ILEC to provide IP interconnection. WorldNet's requests for IP interconnection have been denied repeatedly by an ILEC content to maintain the status quo. The Commission should not let ILECs thwart the industry-wide benefits of the TDM-to-IP transition by refusing IP interconnection with competitive providers. Put differently, the ILEC cannot have it both ways – it cannot tout the benefit of IP transition as a basis for regulatory change, yet, deny competitors meaningful ability to interconnect under fair and reasonable conditions in accordance with the pricing structure (TELRIC) which has previously been thoroughly developed, analyzed, and enshrined by the FCC, and, upheld by the United States Supreme Court, as the only mechanism appropriate to foster competitive goals.

The Commission also should take into account the availability of unbundled ILEC copper loops to provide, among other things, Ethernet over copper broadband services. In Puerto Rico, WorldNet pioneered and has utilized this approach as a supplement to its substantial investments in its own facilities to effectuate a TDM-to-IP transition that is benefitting thousands of Puerto Rico small and medium sized businesses (as well as much larger enterprise customers). It's a path the ILEC has recently tried to emulate.

It would defy reason for the Commission to eliminate these established IP-based services in the name of promoting the deployment of IP-based services. Moreover, it would be a perverse result – one that is inconsistent with the basic choice made by Congress in the 1996 Act – for the

⁵ It would be interesting to consider the price of a facility which, by definition, a party claims is a cost burden and affirmatively seeks to abandon. One might think that the value would be “negative...,” that is, that the abandoning party should pay to the receiving party for the benefit of being relieved of its future burden. In any event, all of such considerations would be ones for the appropriate dispute resolver or local regulator to determine.

Commission to conclude that the best way to promote innovation in telecommunications markets is not through UNE-based competition, but instead through a continuing and/or further grant to ILECs of immunity from competition (through either regulation-relaxed trials or the continuation of existing options for ILECs to retire copper without any consideration of market impact) in exchange for bald ILEC assurances that they will respond with additional innovation and investment.

Certain ILEC commenters are pushing to leave copper retirement rules alone or relax them further. WorldNet urges exactly the opposite result – in light of the stated intention to aggressively move away from these networks, such rules must be strengthened, not left alone or weakened, and a thoughtful and mandatory process put in place as a pre-condition to any action that might result in the removal of critical copper and other inputs for competitive carriers.

C. Puerto Rico is a Case in Point Demonstrating the Need for Particularized Findings Based on Local Conditions.

As indicated above, it is crucial that insofar as the Commission determines that changes in its rules are needed to advance the TDM-to-IP transition, local conditions are treated as having paramount importance. Puerto Rico, where the roots of competition created by the 1996 Act have yet to grow nearly as deep as in other mainland jurisdictions, is a case in point.

While the notion that copper last-mile facilities are an albatross hindering a TDM-to-IP transition is an utter fallacy anywhere, it is especially so in Puerto Rico, where WorldNet has implemented a strategy that involved both using the basic tools conferred upon it by the 1996 Act (including access to unbundled copper loops) and building its own IP-based network facilities. The unbundling requirement of the 1996 Act is a key reason why thousands of Puerto Rico consumers are now using IP-based, broadband services relying heavily on the unbundling of the ILECs' copper facilities.

Yet, despite WorldNet's successes, the battle is only half-won. While WorldNet has been a catalyst for competitive change in Puerto Rico, the level of competition envisioned by the 1996 Act has yet to develop. One reason is simple economics: more than 45 percent of the population is estimated to be living below the poverty line.⁶ It is therefore not surprising that Puerto Rico lags behind United States mainland jurisdictions competitively, economically, and technologically, including in the level of broadband penetration.⁷

Moreover, WorldNet has had to struggle with more than a distressed economy. WorldNet has been forced to fight battles with the ILEC that have long been resolved in other jurisdictions or were not even waged at all. For example, as we speak, one day shy of the seventeenth anniversary of the Commission's initial local competition rules, WorldNet is in the middle of a costly arbitration forced by a sudden and inexplicable ILEC declaration that cross connects from WorldNet's collocations to ILEC UNEs are now "entrance facilities" subject to tariff charges that are almost 250 times higher than the state commission (i.e., Board) approved TELRIC rate for the facilities.

WorldNet also has had to struggle with the ILEC's denial of IP interconnection. As WorldNet discussed in an earlier filing in this docket [CITE], the stated basis for the ILEC's

⁶ U.S. Census Bureau, United States Department of Commerce, Economics and Statistics Administration, "Poverty: 2010 and 2011, American Community Survey Briefs," Issued September 2012, by Alemayehu Bishaw.

⁷ This fact was acknowledged by the Commission in its Sixth Broadband Deployment Report, as follows:

[A]pproximately 14 to 24 million Americans remain without broadband access capable of meeting' the minimum upload/download speeds required under the Telecommunications Act...[O]ut of the approximately 24 million Americans who live in areas unserved by broadband, 1/6th (almost four million) live in Puerto Rico[T]he Commission must 'take immediate action to accelerate deployment of advanced telecommunications [i.e., broadband] capability by removing barriers to infrastructure investment *and by promoting competition in the telecommunications market...*' Denying access to broadband, according to the Chairman Genachowski, denies citizens of the "transformative power" it offers...

See Letter to Marlene Dortch dated March 14, 2011, made on behalf of the Telecommunications Regulatory Board of Puerto Rico (emphasis added).

denial of IP interconnection was the fact the ILEC was not deploying IP switches itself. Thus, at least in Puerto Rico, the ILEC driven IP transition so many commenters have talked about simply does not exist and the ILEC's foot-dragging undercuts the whole basis for free-reign copper retirement or any other blank check regulatory relief.

In short, whatever the ILECs say may be happening in other parts of the country, it is not happening (at least, from the ILEC) in Puerto Rico. Thus, eliminating or merely disadvantaging WorldNet's existing IP-based service option would do nothing to effectuate a TDM-to-IP transition in Puerto Rico; it would serve simply to anoint the ILEC as the sole architect and provider of IP-based solutions to many Puerto Rico consumers, with the power to deny thousands of existing Puerto Rico consumers both their desired IP-based service platform and their desired IP-based service provider. It would be an illogical, counter-productive, and unlawful exercise that defies the basic competitive principles underlying the 1996 Act, scuttling over a decade of WorldNet's hard fought efforts to become a leading IP-based service provider and innovator in Puerto Rico in precisely the way that Congress envisioned.⁸

Broadband offers a truly "transformative" power to promote economic development make life better for millions on the island. It is WorldNet's sincere belief that its presence as a competitive alternative and its innovation in broadband, and now cloud computing and technology over broadband, can truly make a difference. Therefore, to the extent that the Commission decides to conduct trials, it must not do so in a way that compromises the already

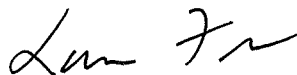
⁸ WorldNet acknowledges that it is possible that the ILEC in Puerto Rico (or any other particular jurisdiction) may not be inclined or able to retire its copper network for some time. Even so, a Commission ruling giving such ILEC the present or future capacity to unilaterally make the determination to retire copper loops that competitors like WorldNet not only presently use to serve customers but further count on in future business and technical planning would still materially and immediately impair competition by, among other things, putting a competitor's network options into the hands of its biggest competitor and potentially diminishing asset value and discouraging investment in competitive providers faced with the prospect of drastic network and business model reconfiguration.

robust and growing IP and broadband efforts of competitors like WorldNet. Rather, as suggested above, the Commission must make establish substantive and procedural safeguards that will ensue that decisions take into account local conditions and ensure that competitors like WorldNet who are leading the way in the TDM-to-IP transition still have a place in the market when ILECs finally join in the transition.

CONCLUSION

WorldNet joins those in this proceeding opposing the trials currently proposed by the Task Force. No one can deny that the TDM-to-IP transition is already happening. And, in many markets, particularly Puerto Rico, it is competitors that are driving that transition to the benefit of thousands of telecommunications consumers. WorldNet echoes the comments of these other competitors that no trials are necessary to identify the core issues that are impeding their continuing efforts to drive this transition: (1) ILEC refusals to IP interconnection and (2) the ability and threat of ILECs with continuing market power to eliminate competition by the retirement of last-mile copper facilities. These impediments must be at the forefront of any Commission transition efforts.

Respectfully submitted,



Lawrence R. Freedman
Counsel for WorldNet Telecommunications, Inc.

EDWARDS WILDMAN PALMER LLP
1255 23rd Street, NW, Eighth Floor
Washington, DC 20037
Telephone: (202) 478-7370
Facsimile: (202) 478-7380

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